In the High Court of Judicature at Madras

Dated: 18/03/2003

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The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition Petition No.8370 of 2003
and
W.P.M.P.Nos.10715 & 10716 of 2003

Shanmugam .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by Secretary to
Government Home (Prison)
Department, Fort St. George
Chennai 600 009.

2. The Inspector General of Prisons
Gandhi Irvin Road
Egmore, Chennai 600 008.

3. The Superintendent
Central Prison, Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of writ of certiorari as stated therein.

For petitioner : Mr. Conscious Ilango

For respondents : Mr. S. Venkatesh
Addl. Govt., Pleader

:ORDER

The petitioner, a prisoner sentenced to imprisonment for life in Crime No.80 of 1996 registered under Section 302 of the Indian Penal code on the file of Porur Police Station, Dharmapuri District has filed the above writ petition, questioning the G.O.Ms.No.683 Home (Prisons-5) Department dated 05.08.2002 of the Government of Tamil Nadu prohibiting the use of tobacco in any form in prisons by the prisoners.

2. On direction, learned Additional Government Pleader takes notice for the respondents.

3. According to the petitioner, during the pre-conviction stage and after the conviction when lodged at Central Prison, Vellore, he had been allowed to smoke beedies purchased at his own costs. The prisoners are allowed to smoke within the cells and dormitories. But, suddenly, on and after first week of January,2003, the prisoners inside the prison are not allowed to purchase beedies and prevented from smoking. On enquiry, he came to know that the Government of Tamil Nadu has passed the impugned order in G.O.Ms.No.683 Home (Prisons 5) Department dated 05.08.2002, making amendments to the Tamil Nadu Prison Rules, 1983, totally prohibiting the use of tobacco in any form by the prisoners.

4. The learned counsel for the petitioner, after taking me through the impugned Government Order would contend that the same is arbitrary, illegal and unreasonable. He also contended that without any

concrete material regarding 'fire accident' or 'misuse', the Government is not justified in imposing total ban of use of tobacco in any form. I am unable to accept both the contentions for the following reasons.

5. It is seen that as per Rule 227 of the Tamil Nadu Prison Rules, 1983, the prisoners are ordinarily be allowed to smoke within the Cells or the Dormitories. As per Rule 456, the prisoners working in prison industries were given beedies as task beedies. It is further seen that in order to avoid discrimination among the smokers and the non-smokers, the Government, in G.O.Ms.No.1492 Home dated 13.06.1986, have abolished the task beedies and paid three paise per day for the prisoners as compensation. It is further seen that as per Rule 481 (2), the prisoners are permitted to purchase tobacco, cigarette etc., for their use. While so, the Inspector General of Prisons in his letter dated 02.05.2000 and 03.02.2002, informed the Government that the prison being a security area, allowing smoking inside the prison may give rise to 'fire accident', 'misuse of fire' etc., In his letter, the Inspector General of Prisons has also stated that at present so many welfare programs, such as higher education, vocational training, computer education, yoga, meditation etc., are being conducted in prisons to rehabilitate the prisoners, which help them to get over their mental worries. Among the welfare programs, it is highlighted that the yoga and meditation programs, which are now being conducted in prisons, will strengthen the mental power of the prisoners and may in turn help them to give up the habit of smoking. Citing all these welfare programs being followed in prisons, the Inspector General of Prisons is of the opinion that the banning of smoking in prison may not affect the mental health of the habitual smokers. The Inspector General of Prisons has also requested the Government that the use of tobacco in any form by the prisoners in prison is to be prohibited, accordingly, he requested the Government to ban the use of tobacco in any form in prisons by the prisoners and staff. The Government considered the above proposal of the Inspector General of Prisons, accepted the same and passed the impugned order prohibiting the use of tobacco in any form in prisons by the prisoners. Following the said order, necessary notification was also issued amending the Tamil Nadu Prison Rules, 1983.

6. Though it is stated that the impugned order of the Government banning the use of tobacco in any form is arbitrary, illegal and unreasonable, first of all the same has not been substantiated and are liable to be rejected. Before passing the impugned order, it is to be noted that taking note of various aspects including the fact that allowing smoking inside the prison may give rise to 'fire accident' or likely to be 'misused', the competent authority, namely, the Inspector General of Prisons sent a report to the Government and the same was considered and accepted by the Government and amended the Tamil Nadu Prison Rules, 1983. The said move cannot be characterised as either illegal, unreasonable or arbitrary. On the other hand, the Government is fully justified in banning the use of tobacco in any form in prisons by the prisoners, including the staff. Though it is stated that because of his habit he is unable to give up the smoking, in the light of the fact that several welfare programs including yoga and meditation programs are being conducted in prisons in an organised manner, as stated in the Government Order, the banning of smoking in prison may not affect the mental health of the habitual smokers, accordingly, I reject all the contentions raised by the learned counsel for the petitioner.

I am satisfied that the present order of the Government, banning the use of tobacco in any form in prisons by the prisoners and staff is a right decision and the same cannot be interfered by this Court. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected WPMPs., are also dismissed.

Index:Yes
Internet:Yes

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To

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Chennai 600 009.
2. The Inspector General of Prisons
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